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2 State Auditor's Office
3 840 Helena Ave.
4 Helena, MT 59601
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6 Attorney for the Department of Insurance

7 **BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE**
8 **OFFICE OF THE STATE AUDITOR**
9 **STATE OF MONTANA**

10 IN THE MATTER OF THE LICENSE DENIAL
11 OF ROBERT DOUGLAS KOLLAR,

Respondent.

Case No. INS-2009-67

**NOTICE OF PROPOSED
AGENCY ACTION AND
OPPORTUNITY FOR HEARING**

12
13 TO: Robert Douglas Kollar
14 P.O. Box 4331
15 Bozeman, MT 59772

(Respondent)

16 James M. Kommers, Esq.
17 517 South 22nd Ave., Ste. 5
18 Bozeman, MT 59718-6842

(Attorney for the Respondent)

19 **PLEASE TAKE NOTICE:**

20 On Tuesday, November 3, 2009, at 1:00 p.m. at the Office of the State Auditor and
21 Insurance Commissioner, 840 Helena Avenue, Helena, Montana, Second Floor Conference
22 Room, a hearing will be held regarding the September 16, 2009 refusal to issue an insurance
23 producer license to Robert Douglas Kollar (Respondent).

24 Staff of the Insurance Department (Department) of the office of the Montana State
25 Auditor and Commissioner of Insurance (Commissioner), pursuant to the authority of the
26 Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, is proposing that the
27 Commissioner refuse to issue an insurance producer license to Respondent for violations of Title
28 33, Chapter 17, Montana Code Annotated.

1 The Commissioner has authority to take such action under the provisions of Mont. Code
2 Ann. §§ 33-1-311, 33-1-314, 33-17-201, 33-17-211, and 33-17-1001.

3 The State Auditor's Office will make reasonable accommodations for persons with
4 disabilities who wish to participate in this hearing or need an alternative accessible format of this
5 Notice. If you require an accommodation, please contact Darla Sautter, State Auditor's Office,
6 840 Helena Avenue, Helena MT 59601, Phone: (406) 444-2726, Fax: (406) 444-3497, no later
7 than 5:00 p.m. fourteen (14) days before the hearing to advise of the nature of the
8 accommodation that you need.

9 **REASONS FOR ACTION**

10 There is reasonable cause to believe that the following facts will be proven true and
11 justify the denial of Kollar's application for an insurance producer license.

12 **FACT ASSERTIONS**

- 13 1. Kollar is a resident of the state of Montana.
- 14 2. On August 22, 2009, Kollar took and successfully passed his life producer exam.
- 15 3. On August 8, 2009, Kollar took and successfully passed his health producer exam.
- 16 4. On August 24, 2009, the Department received Kollar's application for an individual
17 producer license.
- 18 5. Kollar stated that he had never been convicted of a felony in his application.
- 19 6. Kollar swore upon his oath that the statements made in his application were true to the
20 best of his knowledge, information, and belief.
- 21 7. The Department conducted a criminal background check of Kollar and discovered that
22 Kollar had, in fact, been convicted of a felony for transporting and selling narcotics in 1982 and
23 was sentenced to thirty days in jail and three years probation.
- 24 8. Additionally, Kollar's criminal history report revealed a pattern of multi-state criminal
25 conduct spanning over twenty years which included felony offenses that were pled down to
26 misdemeanors or dismissed. These offenses included, but were not limited to, theft, criminal
27 mischief or vandalism, burglary, drinking and driving, drug possession and distribution, battery,

shoplifting, and inflicting corporal injury on his spouse. As recent as 2003 Kollar had a restraining order against him to protect what is believed to be his wife and son.

9. On December 16, 2008, the Department notified Respondent, in writing, that his application for individual producer license was denied for fraud or misrepresentation in his application for failing to disclose his felony conviction.

10. On December 30, 2008, the Department received a written request for hearing from Respondent.

CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Insurance pursuant to Mont. Code Ann. § 2-15-1903.

2. The Montana Insurance Department (Department) is under the control and supervision of the Commissioner pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

3. The Commissioner shall administer the Department to protect insurance consumers pursuant to Mont. Code Ann. § 33-1-311.

4. Service of process was effectuated by mail pursuant to Mont. Code Ann. § 33-1-314.

5. The Commissioner and the Department have jurisdiction over this matter. Mont. Code Ann. § 33-1-311.

6. An insurance producer license from the Department must be obtained prior to holding oneself out to be an insurance producer or acting as an insurance producer for subjects of insurance located, resident or to be performed in Montana. Mont. Code Ann. § 33-17-201.

7. A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code. Mont. Code Ann. § 33-1-102.

8. The Commissioner may refuse to issue an insurance producer's license when an applicant for an insurance producer's license attempted to obtain a license through misrepresentation or fraud, including, but not limited to, providing incorrect, misleading, incomplete, or materially untrue information in the license application. Mont. Code Ann. § 33-17-1001(b).

9. The Department properly refused to issue an insurance producer's license to Respondent pursuant to Mont. Code Ann. § 33-17-1001 because Kollar attempted to obtain an insurance producer's license through fraud or misrepresentation in failing to disclose his felony conviction in his application for an insurance producer's license and by failing to complete his application by producing copies of court records relating to his conviction.

10. Additionally and alternatively, the Commissioner may refuse to issue an insurance producer's license when an applicant for an insurance producer's license has been convicted of a felony, the conviction bears a close relationship to the occupation for which licensure is sought, and the applicant has not been sufficiently rehabilitated. Mont. Code Ann. §§ 33-17-1001(e), 37-1-203; *Ulrich v. Board of Funeral Services*, 289 Mont. 407, 961 P.2d 126 (1998).

11. The Department properly refused to issue an insurance producers license to Respondent because Respondent's felony conviction for distribution of illegal substances may be a crime involving dishonesty for purposes of 18 U.S.C. § 1033 according to the National Association of Insurance Commissioners 1033 Guidelines, and so bears a close relationship to the occupation of insurance producer which requires handling consumer money, and Respondent has not been sufficiently rehabilitated as indicated by his misrepresentation in his application for a producer license.

RELIEF REQUESTED

For violating provisions of the Montana Code Annotated, the Department seeks that the Commissioner refuse to issue an insurance producer license to Kollar for fraud or misrepresentation pursuant to Mont. Code Ann. § 33-17-1001.

STATEMENT OF RIGHTS

You, Robert Kollar, are entitled to a hearing to respond to this Notice and present evidence and arguments on all issues involved in this case. A formal hearing has been scheduled as set out in the first page of this Notice before an impartial hearing examiner appointed by the Commissioner as provided in the Montana Administrative Procedure Act. Mont. Code Ann. § 2-4-601, *et seq.*

1 You have a right to be represented by legal counsel at any and all stages of this
2 proceeding. If the attorney you choose has not been admitted to the practice of law
3 in the State of Montana, she or he must comply with the Montana State Bar requirements for
4 appearing *pro hac vice* and *Application of American Smelting and Refining, Co.*, 164 Mont. 139,
5 520 P.2d 103 (1973); and *Mont. Supreme Court Comm'n on the Unauthorized Practice of Law v.*
6 *O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200 (2006).

7 **CONTACT WITH COMMISSIONER'S OFFICE**

8 If you have questions or wish to discuss this matter, please contact Michael Winsor, Staff
9 Attorney, State Auditor's Office, 840 Helena Ave, Helena, MT, 59601, (406) 444-2040 or,
10 within Montana, (800) 332-6148. If you are represented by an attorney, please make any contacts
11 with this office through your attorney.

12 **POSSIBILITY OF DEFAULT**

13 Failure to attend the hearing will result in the entry of a default order imposing any
14 sanctions available under Montana law, without any additional notice to you, pursuant to Mont.
15 Admin. R. 6.2.101 and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

16 DATED this 19 day of October, 2009.

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21 Michael Winsor
22 Attorney for the Department of Insurance
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CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of OCTOBER, 2009, I served a true and accurate copy of the foregoing Notice Hearing on Proposed Agency Action upon the Respondent, by U S Mail, postage prepaid, upon the Hearing Examiner, by U.S. mail, postage prepaid, at the following addresses:

Robert Douglas Kollar
P.O. Box 4331
Bozeman, MT 59772

(Respondent)

James M. Kommers, Esq.
517 South 22nd Ave., Ste. 5
Bozeman, MT 59718-6842

(Attorney for the Respondent)



Darla Sautter
Legal Administrative Secretary
Montana State Auditor's Office